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Letter dated 3 April 2007 from the President of the International Court of Justice to the President of the General Assembly

I am writing urgently on behalf of the International Court of Justice, the principal judicial organ of the United Nations, to draw your attention to a draft resolution submitted to the General Assembly by the Fifth Committee entitled "Conditions of service and compensation for officials other than Secretariat officials: members of the International Court of Justice and judges and ad litem judges of the International Tribunal for the Former Yugoslavia and the International Criminal Tribunal for Rwanda" (A/61/592/Add.4, draft resolution I). The Court understands that the Assembly is to take action on the draft on 4 April 2007.

I am instructed by the Court to express its extremely serious and deep concern that the proposed action regarding emoluments, if approved by the General Assembly, would not be in conformity with the Statute of the Court, which forms an integral part of the Charter of the United Nations. The Court is convinced that this could not have been the intention of its drafters.

It is very likely, if not almost certain, that the remuneration of newly elected judges, including those due to take office on 5 February 2009, will be substantially lower than the current remuneration, which is to be applied as a transitional measure for the current judges until such time as this amount is overtaken by the new system. (At present, a difference of approximately $2,500 per month has been identified.) Under Article 32, paragraph 1, of the Statute, each member of the Court shall receive an annual salary. As a matter of the principle of equality, the salary shall be the same for each member. Article 31, paragraph 6, of the Statute emphasizes that ad hoc judges shall also sit in equality with the permanent bench.

The equality of all judges is a fundamental principle underlying the Statute. That principle can in no way be set aside by provisions that stipulate that all new members shall be on the same salary, and that the present salary of existing members shall be protected. The proposed system would still result in discrimination between members of the Court, i.e. those who assumed office before 1 January 2007 and those who will assume office after that date.

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Any rules in this respect that may apply to national courts can have absolutely no relevance with respect to the International Court of Justice, principal judicial organ of the United Nations, which is called upon to settle disputes between sovereign States. The Member States of the United Nations that bring cases before the Court are fully entitled to assume that all judges on the bench are sitting in total equality.

In addition, the above-mentioned draft resolution also violates Article 32, paragraph 5, of the Statute: freezing the emoluments of the members of the Court currently in office, as envisaged in paragraph 7 of the draft resolution, without taking further account of changes in the exchange rate and the cost of living in the future will most certainly result in a de facto reduction in those emoluments.

The Court had earlier taken note of paragraph 10 of the report (A/61/612 and Corr.1) in which the Advisory Committee on Administrative and Budgetary Questions recommended that alternative methods be elaborated for adjusting remuneration according to market exchange rates and movements of the local cost-of-living index, with a view to protecting the level of remuneration, and that the new proposals be presented by the Secretary-General in a report to the General Assembly at its sixty-second session. The Court expected to be consulted, as usual, in the process of the preparation of such a report. Unfortunately, it was not; it has now been caught by surprise, without being previously informed, by the proposed new system being submitted for approval by the General Assembly.

You will appreciate that the problem thus created is extremely serious, since, quite apart from the financial aspects briefly summarized above, it concerns the very integrity of the Court's Statute.

The Court, which represents the principal legal systems of the world, is the guardian of legality under the Charter. It would urge the General Assembly to postpone the approval of any new system, subject to submission by the Secretary-General of new proposals, as recommended by the Advisory Committee on Administrative and Budgetary Questions.

May I kindly ask you to ensure the circulation of the present letter as a working document before any discussion of the matter by members of the General Assembly.

(*Signed*) Rosalyn **Higgins**
President